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September 6, 2023

By ECF

Hon. Louis L. Stanton, U.S.D.J.
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312*Further proceedings are stayed
pending Judge Rearden's decision
of 22 cv 905. Louis L. Stanton
9/7/23*Re: McGucken v. Shutterstock, Inc., 23-cv-4234 (LLS); Status Report

Dear Judge Stanton:

Our firm represents defendant Shutterstock, Inc., in the above-referenced case, which plaintiff Elliot McGucken commenced on January 12, 2023 and served on March 22, 2023, and which was transferred to this Court by stipulation on May 16, 2023. We write to report on the status of the action and propose a stay, for the reasons set forth below.

As Your Honor's clerk indicated to us when requesting an update, this copyright action bears similarities to another action involving the same parties as here, and pending in this District. *See McGucken v. Shutterstock, Inc.*, No. 22-cv-905 (JHR). Presently, cross-motions for summary judgment, which were initially filed on January 20, 2023 and fully submitted on March 3, 2023, remain under consideration. Both cases have commonalities beyond the identity of the parties in the captions and the legal theories asserted. Both actions involve a group of plaintiff's landscape images that plaintiff initially posted on social media photography sharing site Flickr, with at least one of the images in this case also present in the earlier-filed case. Both concern contributor-submitted images on Shutterstock's contributor platform. With the exception of just one image, both are lawsuits filed regarding images without any DMCA or other prior notices being submitted to Shutterstock, which is one of the core facts that is part of the summary judgment briefing. Accordingly, the outcome of the motion—while not binding on this Court—is likely to inform or at least affect the progress and approach that the parties might take as to the current matter.

The parties have conferred regarding this matter and the procedure for the proceedings. While plaintiff does not agree with most of the factual characterizations made above regarding the substance of the case, plaintiff does agree that the case should be stayed. We are prepared to provide the Court with any further information it may request in order to evaluate the proposed request to stay, as well as appear before a conference if the Court so desires.

We thank the Court for its consideration of this request.

MEMO ENDORSED

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "EML", written over a circular scribble.

Eleanor M. Lackman

EML/kld

cc: All counsel of record (*via* ECF)